161

(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

CHARLES D. GIANETTI, M.D.

V.

GLENN AND LAURA SIGLINGER AND
FOSTER M. YOUNG

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

# PETITION FOR WRIT OF CERTIORARI

Charles D. Gianetti, M.D., Pro Se
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1. Did the Supreme Court of the State of Connecticut deprive the plaintiff/appellant of substantive due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution by failing to reverse the Appellate Court of the State of Connecticut's striking of Plaintiff/appellant's Brief and subsequent dismissal of plaintiff/appellant's appeal?

2. Did the Supreme Court of the State of Connecticut deprive the plaintiff/appellant of substantive due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution by failing to reverse the decision on the Appellate Court of the State of Connecticut denying plaintiff/ appellant's Motion For Reconsideration En Banc of its Corrected Order of September 6, 2007, dismissing the portion of the appeal challenging the trial court's March 22, 2007 judgment as to defendant/appellee Young?

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Windsor v. McVeigh, 98 US 274 23 L. Ed. 914 (1876) (same). 4

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OTHER

Connecticut Rules Of Appellate Procedure Section 63 11

## BASIS FOR JURISDICTION

The Supreme Court of the State of Connecticut entered an Order in December 2009, which plaintiff/appellant asserts confirms an Appellate Court decision which violates the Fifth and Fourteen Amendments of the Constitution of the United States.

The Fifth Amendment and Fourteenth Amendments of the United States Constitution hold, in pertinent part, "...nor shall any person...be deprived of life, liberty, or property, without due process of Law...."

## STATEMENT OF THE CASE

In what appears to be, far as can be determined, a case of first impression, all state court remedies, including a Petition For Certification to the Supreme Court of the State of Connecticut, have been exhausted. Plaintiff/appellant timely filed an appeal of the trial court Memorandum Of Decision dated March 22, 2007, granting defendants/appellees Siglingers and defendant/appellee Young appellate attorney's fees.

The Appellate Court of the State of Connecticut granted defendant/appellee Young's Motion To Dismiss, but denied defendants/appellees Siglingers' Motion For Permission To File a Late Motion To Dismiss Appeal, as to the March 22, 2007, decision.

Plaintiff/ appellants Motion For Reconsideration En Banc dated September 21, 2007, was denied by the Appellate Court. After plaintiff/appellant filed a Notice that there was no written decision in reference to the trial court's ruling of May 18, 2007, the trial court filed a Memorandum dated August 4, 2008.

Plaintiff/appellant timely filed Plaintiff/ appellant's Brief, which was stricken by the Appellate Court in an Order dated November 5, 2008, to delete argument concerning the award of attorney's fees to defendant/appellee Young.

The Appellate Court denied an extension of time to file a Motion For Reconsideration En Banc. Compliance with the Order would effectively waive plaintiff/appellant's due process rights, and when no

further brief was submitted, the appeal was dismissed by an order dated February 27, 2009.

The Supreme Court of the State of Connecticut denied plaintiff/ appellant's Petition For Certification based on deprivation of constitutional rights, in an order mailed to plaintiff/appellant on December 2, 2009,

ARGUMENT

A Petition For Certification to the Supreme Court of Connecticut is authorized only from a final determination by the Appellate Court [State v. Ellis, 224 Conn. 711, 719-21, 621 A.2d 250 (1983)], which was issued by the Appellate Court in its order dismissing plaintiff/appellant's appeal. [Appendix A].

1. The Supreme Court of the State of Connecticut deprived the plaintiff/appellant of substantive due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution by failing to reverse the Appellate Court of the State of Connecticut's striking of Plaintiff/ appellant's Brief and subsequent dismissal of plaintiff/appellant's appeal.

The Supreme Court of the United States traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances, and,

where a plaintiff's claim had been dismissed for failure to comply with the trial court's order, the Fifth amendment's Due Process Clause imposed "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." Societe Internationale v. Rogers, 357 US 197, 2 L. Ed. 2d 1255,78 S. Ct. 1087 (1958). See also, Hammond Packing Co. v. Arkansas, 212 US 322, 349-351, 53 L. Ed 530, 29 S. Ct. 370 (1909) (power to enter default judgment); Hovey v. Elliott, 167 US 409, 42 L. Ed. 215, 17 S. Ct. 841 1897); (same); Windsor v. McVeigh, 98 US 274 23 L. Ed. 914 (1876) (same).Cf. Wolff v. McDonnell, 418, US 539, 558, 41 L. Ed. 2d 935, 94 S. Ct. 2963, 71Ohio Ops 2d 336 (1974).

> Similarly, the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedure, when such an action would be the equivalent of denying them an opportunity to be heard upon their claimed right[s]." Boddie v. Connecticut, 401 US 371, 380, 28 L. Ed. 2d, 113, 91 S. Ct. 780 (1971).

As United States Supreme Court decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged. Logan v. Zimmerman, 455 US 422, 71 L. Ed 2d 265, 102 S. Ct. 1148 (1983).

Once a state has created a statutory right of appeal the procedures afforded to secure that right must comport with due process and equal protection. People ex rel.T.D., 140 P.3d 205 (Colo. Ct. App. 2006), cert. denied, (June 26, 2006) and cert. denied, 127 S. Ct. 565 (U.S. 2006).

If a state does provide an avenue of appeal, it must be implemented fairly, and thus, the procedures used to decide appeals must comport with the Federal Due Process Clause. In Re Civil Commitment of D.I., 351 N.J. Super. 77, 797 A.2d166 (App. Div. 2002). Where the legislature has provided the right of an appeal, the minimum essential elements of due process of law in an appeal affecting a person's life, liberty, or property are notice and an opportunity to be heard at a meaningful time and in a meaningful manner. Riedmiller v. Harness, 29 Kan. App. 2d 941, 34 P.3d 474 (2001).

Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty'or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment."*Matthews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L,Ed.2d 18 (1976). Piscottano v. Town of Somers, 396 F.Supp.2d 187 (D.Conn. 2005). The Appellate Court denied due process in striking Plaintiff/appellant's Brief [Appendix B].

> " '[T]he striking of an appellate brief, in whole or in part, is a harsh sanction and

> appropriate only when the alleged violations of procedural rules interfere with or preclude review.' " *In re Detention of Powell*, 217 Ill.2d 123, 132, 298 Ill.Dec. 361, 839 N.E.2d 1008, 1013 (2005), quoting *Moomaw v. Mentor H/S, Inc.*, 313 Ill.App.3d 1031, 1035, 247 Ill. Dec. 43, 731 N.E.2d 816, 820 (2000). Radosevich v. Industrial Com'n, 367 Ill. App. 3d 769, 305 Ill. Dec. 469, 856 N.E.2d 1 (Ill.App. 4 Dist. 2006).

A brief will not be stricken merely because the brief contains untenable positions. Iowa-Benson & Marxer v. Brown, 190 Iowa 848, 179 N.W. 81 (1920). A pertinent portion of Plaintiff/appellant's Brief [Appendix E] refers at the very least to argument concerning the timely filed appeal as to the erroneous trial court Memorandum dated August 4, 2008.

Further, it has been held that, after a brief has been stricken, the court must nevertheless search the record for fundamental error. Brown v. Spector, 70 S.W. 2d 478 (Tex. Civ. App. 1934); Cope v. Henderson, 460 S.W. 2d 183, 198 (Tex Civ. App., Texarkana, July 28, 1970).

Dismissal at the appellate level constitutes a harsh sanction. Patton v State, Dept of Health and Rehabilitative Services,Office of Child Support Enforcement ex rel. D.A.R. 620 So. 2d 1107 (Fla. Dist. Ct. App. 2d Dist. 1993).

As to the Dismissal Order of the Appellate Court [Appendix D], with an extension of time until February 27, 2009, by the order of February 11, 2009 [Appendix F] courts have held that it is preferable that an

appellate court address the merits of an appeal whenever possible so that any doubt may be resolved in allowing rather than dismissing an appeal. Brown v, Hamid, 856 S. W 2d 51 (Mo. 1993); K & K Implement, Inc., v. First Nat. Bank Hettinger, N.D., 501 N.W. 2d (N.D. 1993). Indeed, an appellate court has a strong preference for deciding cases on their merits; and it is the task of an appellate court to resolve appeals on the merits if at all possible. Heim v. Chevon U.S.A., Inc, 593 So. 2d 727 (La. Ct. App. 4th Cir, 1992). Francis v. Dun & Bradstreet, Inc., 3 Cal. App. 4th 535, 4 Cal. Rptr. 2d 361 (4th Dist. 1992). The dismissal of appellate proceedings may be viewed as something that should be done sparingly, and only after repeated violations or contumacious disregard of the court's orders.

In addition, in plaintiff/appellant's appeal there is no improper or scandalous matter, the basis for dismissal as in Green v. Elbert, 11 S.Ct 188 (U.S. Colo., 1891). The power to dismiss an appeal should not be used except in the absolutely clearest cases. San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Ass'n, 125 Cal. App. 4th 343, 22 Cal. Rptr. 3d 724 (1st Dist. 2004); People ex rel. Lockyear v. Brar, 115 Cal. App. 4th 1315, 9 Cal Rptr. 3d 844 (4th Dist. 2004). Accordingly, dismissal of an appeal may be

warranted only when it is prosecuted for an improper motive, to harass the respondent or delay the effect of an adverse judgment, or when it indisputably has no merit, *i. e.*, where any reasonable attorney would agree that the appeal is totally and completely without merit. Olsen v. Harbison, 134 Cal. App. 4th278, 35 Cal. Rptr. 3d 909 (3d Dist. 2005), review denied, (Feb. 1, 2006). Moreover, a jurisdiction may require an appellate court to give each litigant every opportunity to be heard on the merits of the case, and not deny this right to any litigant unless the court is compelled to do so Berry-Parks Rental Equipment Co., Inc. v. Sinsheimer, 842 S.W.2d 754 (Tex. App. Houston 1st Dist. 1992).

Indeed, an appellate court has a strong preference for deciding cases on their merits; First Nat. Bank of Belfield v. Candee, 488 N.W.2d 391 (N.D. 1992) and it is the task of the appellate court to resolve appeals on the merits if at all possible. Francis v. Dunn & Bradstreet, Inc., 3 Cal. App. 4th 535, 4 Cal. Rptr. 2d 361 (4th Dist. 1992).

The dismissal of appellate proceedings may be viewed as something that should be done sparingly, (criminal case) and only after repeated violations or contumacious disregard of the court's orders. Craig v. Preston, 593 So. 2d 578 (Fla. Dist. Ct. App. 3d Dist. 1992); Krebs v. State, 588 So. 2d 38 Fla. Dist. Ct. App. 5th Dist. 1991). None of the adverse

circumstances or conditions in the cited cases exist here.

Justice Jackson, writing for the Court in Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 94 L. Ed. 865, 70 S. Court 652 (1950), observed: "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id. at 313, 94 L. Ed, 865, 70 S. Ct.
652.

Here, for the reasons above, the Appellate Court, and by affirmation the Supreme Court, have deprived plaintiff/appellant of his rights under the Fifth and Fourteenth Amendments of the United States Constitution.

2. The Supreme Court of the State of Connecticut deprived the plaintiff/appellant of substantive due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution by failing to reverse the decision of the Appellate Court of the State of Connecticut denying plaintiff/ appellant's Motion For Reconsideration En Banc of its Corrected Order of September 6, 2007, dismissing the portion of the appeal challenging the trial court's March 22, 2007 judgment as to defendant/ appellee Young.

On March 22, 2007, the trial court issued a Memorandum Of Decision. [Appendix G].

On April 5, 2007, within the 20 day appeal period, plaintiff/appellant timely filed a Motion For Extension Of Time for 30 days to file a Motion To Reargue the trial court's decision.

> Even where no provision is made for an extension of time in a particular situation, we have not hesitated to imply that one may be granted. New York, N.H. & H.R. Co. v. Illy, 79 Conn . 526, 528, 65 A. 965; Forbes v. Orange, 84 Conn. 577, 579, 80 A. 710. Morici v. Jarvie, et al,, 136 Conn. 370-371, 71 A.2d 556-557 (1950).

Prior to a decision of the trial court on the Motion For Extension Of Time , and within the 30 day period requested in the motion, in a continuing good faith effort to proceed with diligence, on April 30, 2007, plaintiff/appellant filed a Motion To Reargue the trial court decision. The trial court denied plaintiff/ appellant's Motion To Reargue on May 18, 2007.

The Supreme Court [of Connecticut] has held:

> A motion for extension is implicitly granted if a court takes action on the document for which an extension was requested. Cristini v. Griffin Hospital, 134 Conn. 282, n. 1, 57 A.2d 262, 263-264, n. 1 (1948)(transcript filed late

> motion to file itimplicitly granted when the trial court certified the transcript);
> Lesser v. Lesser, 134 Conn. 418, 419, n. 1, 58 A.2d 512, 516-517, n.1 (1948).

Connecticut Practice Series, Connecticut Rules Of Appellate Procedure, 2007 Edition, Horton and Bartschi, Author's Comments, p. 168. Therefore, plaintiff/appellant's Motion To Reargue is effectively timely filed.

Under Section 63-1(c)(1) of the Connecticut Rules Of Appellate Procedure, a new twenty day period for filing the appeal would begin on the day that the notice of the ruling is given on a motion, that, if granted, would render the judgment ineffective.

Further pursuant to Section 63-1(c)(1) of the Connecticut Rules Of Appellate Procedure, a reargument of the judgment or decision would result in a new period to appeal. Therefore, a new twenty day appeal period commenced on notice of the decision on plaintiff/appellant's Motion To Reargue, *i. e.*, May 18, 2007.

Plaintiff/appellate filed the appeal challenging the Memorandum Of Decision of the trial court dated March 22, 2007, on May 30, 2007, well within the new twenty day period to file an appeal.

Section 63-1(c)(3) of the Connecticut Rules Of Appellate Procedure holds:

> The new appeal period may be used for appealing the original judgment or decision [emphasis added]...

In the alternative, the decision rendered on plaintiff/appellant's Motion To Reargue is the final decision for appeal. Once a "final" decision has been made the clock for filing a notice of appeals begins to run. It stops if a motion for reconsideration is filed while time for appeal remains, see *United States v. Dieter,* 429 U.S. 6, 97 S. Ct. 18, 50 L. Ed. 2d 8 (1976) (holding that this principle applies even if the order is interlocutory and no rule specifically authorizes a motion for reconsideration), and starts anew once such a motion is denied. Fairley v. Fermaint, 482 F.3d 897 (7th Cir. 2006).

Defendant/appellee Young filed a Motion To Dismiss Appeal, alleging that plaintiff/appellate's Motion To Reargue was untimely. Plaintiff/appellant filed an Objection To Motion To Dismiss Appeal, basically as above. Further, even when the Appellate Court has found that an appeal was untimely filed, it considered and ruled on the issues. Altberg v. Kovacs, 31 Conn, App. 634, 626 A.2d 804 (1993).

In the Corrected Order dated September 6, 2007 [Appendix C] the Appellate Court ordered that the appeal be dismissed as to the portion of the appeal challenging the trial court's March 22, 2007, judgment as to defendant/appellee Young. Plaintiff/appellant filed a Motion For Reconsideration En Banc of the Appellate Court Corrected Order.

The Supreme Court [of Connecticut] has held:

> Under the plaintiff's theory the defendants would have been required to file *both* an appeal of the underlying judgment of possession *and* a motion to reargue. The plaintiff would require both actions despite the possibility that a decision granting the motion to reargue may have altered the underlying judgment and thus eliminated the defendants' need to appeal. To require these duplicative actions squanders judicial and party resources.

> Practice Book Section 63-1 (b) prevents this waste of resources and promotes judicial economy by providing that a new appeal period commences upon a court's decision regarding a motion that could render a judgment ineffective...Thus, parties may wait until the court renders decisions on all outstanding motions that would render the underlying judgment ineffective before filing an appeal from the underlying judgment.

Young v. Young, 249 Conn.482, 494 (1999).

The actual absolute amount of time when an appeal may be filed after a timely filed tolling motion, such as a motion to reargue, under Section 63-1(c)(1) of the Connecticut Rules Of Appellate Procedure, depends on the decision of the trial court, and judicial economy dictates that the appeal be filed after a decision on the motion. Young v. Young, *supra*.

Further, the other parties to this action, defendants/appellees Siglingers, filed a Motion For Permission To File a Late Motion To Dismiss Appeal, almost identical to the Motion To Dismiss Appeal of defendant/appellee Young, which was denied by the Appellate Court on January 9, 2008. The status of the appeal as to defendants/appellees Siglingers, *i. e.*, that the Memorandum Of Decision dated March 22, 2007, may be challenged, lends support to plaintiff/appellant's argument in that the appeal as to defendants/appellees Siglinger, under all the same facts and reasons as for the appeal as to defendant/appellee Young, is properly considered timely filed as to the Memorandum Of Decision of March 22, 2007.

Plaintiff/appellant correctly and timely complied with all Connecticut Rules Of Appellate Procedure, and as more fully set forth in 1., *supra*, the Appellate Court is bound to follow the appeal procedures that have been established.

The above law constitutes good reason for denial of the Motion To Dismiss Appeal of defendant/appellee Foster M. Young. Neither the Appellate Court nor the Supreme Court gave any reasons for the arbitrary and erroneous dismissal of plaintiff/appellant's appeal of the March 22, 2007, Memorandum Of Decision as to defendant/appellee Foster M. Young, thereby denying plaintiff/appellant of his due process rights under the Fifth and Fourteenth Amendments of the United States Constitution.

## CONCLUSION

For the above reasons, the Supreme Court should grant this Petition For Certiorari.

PLAINTIFF/APPELLANT,

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3715 Main St.
Bridgeport, CT 06606
(203) 374-9251

Appendix

(A) Order of the Supreme Court On Petition For Certification To Appeal, December 1, 2009.

(B) Order of the Appellate Court November 5, 2008.

(C) Corrected Order of the Appellate Court, September 6, 2007.

(D) Dismissal Order of the Appellate Court, February 27, 2009.

(E) Plaintiff/appellant's Brief excerpt.

(F) Order of the Appellate Court, February 11, 2009.

(G) Opinion of the Superior Court, March 22, 2007.

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-09-0220

Charles D. Gianetti, M.D.

V.

Glenn Siglinger et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court [AC 28857], it is hereby ordered that said petition be, and the same is hereby denied

Rogers, C.J. and Katz, J., did not participate in the consideration or decision of this petition for certification.

BY THE COURT,

ALAN M, GANNUSCIO
ASSISTANT CLERK-APPELLATE

APPENDIX A

Dated:12/1/2009Notice sent: 12/2/09

Clerk, Superior Court, Fairfield, CV098 80349830
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Charles D. Gianetti, self represented party
Robinson & Cole, LLP
Elaine M. Skowronski
Glenn Siglinger, self represented party
Laura Siglinger, self represented party
Seymour Law Firm, LLC
Daniel D. Skuret
Law Offices of Daniel D. Skuret
Foster Young, self represented
party

APPELLATE COURT

STATE OF CONNECTICUT

AC 28857

CHARLES D. GIANETTI, M.D.

V.

GLENN SIGLINGER ET AL.

November 5, 2008

**ORDER**

THE MOTION OF THE PLAINTIFF-APPELLANT, FILED SEPTEMBER 2, 2008, FOR PERMISSION TO FILE A LATE BRIEF HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** GRANTED ONLY IF THE PLAINTIFF FILES A PROPER BRIEF ON OR BEFORE NOVEMBER 20, 2008, THAT DELETES ARGUMENT CONCERNING THE COURTS AWARD OF ATTORNEY'S FEES TO THE DEFENDANT FOSTER M. YOUNG

BY THE COURT

CARL D. CICCHETTI

ASSISTANT CLERK-
APPELLATE

APPENDIX B

NOTICE SENT: 11/6/08
CHARLES D. GIANETTI, PRO SE
ROBINSON & COLE, LLP
ELAINE M. SKORONSKI
GLENN SIGLINGER, PRO SE
LAURA SIGLINGER, PRO SE
SEYMOUR LAW FIRM, LLC DANIEL D. SKURET
FOSTER YOUNG, PRO SE
bjm 225/08223

APPELLATE COURT

STATE OF CONNECTICUT

AC 28857

CHARLES D. GIANETTI, M.D.

V.

GLENN SIGLINGER ET AL.

SEPTEMBER 6, 2007

C O R R E C T E D
ORDER

THE MOTION OF THE DEFENDANT-APPELLEE, FILED JUNE 11, 2007, TO DISMISS, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED GRANTED IN THAT THE APPEAL IS DISMISSED AS TO THE PORTION OF THE APPEAL CHALLENGING THE COURT'S MARCH 22, 2007 JUDGMENT AS TO THE DEFENDANT-YOUNG.

LAVINE, J. RECUSED.

BY THE COURT

PAUL S. HARTAN
DEPUTY CHIEF CLERK

APPENDIX C

NOTICE SENT: SEPTEMBER 10, 2007
CHARLES D. GIANETTI, PRO SE
ROBINSON & COLE, LLP
ELAINE M. SKORONSKI
GLENN SIGLINGER, PRO SE
LAURA SIGLINGER, PRO SE
SEYMOUR LAW FIRM, LLC
DANIEL D. SKURET
FOSTER YOUNG, PRO SE

MKM 1275/063436

APPELLATE COURT
STATE OF CONNECTICUT
AC 28857

CHARLES D. GIANETTI, M.D.

V

GLENN SIGLINGER ET AL.

FEBRUARY 27, 2009

**DISMISSAL ORDER**

PURSUANT TO THE APPELLATE COURT ORDER OF FEBRUARY 11, 2009, ORDERING THE DISMISSAL OF THE ABOVE-CAPTIONED APPEAL UNLESS THE PLAINTIFF FILES HIS BRIEF IN COMPLIANCE WITH THIS COURT'S PREVIOUS ORDER DATED NOVEMBER 5, 2008, REQUIRING THE PLAINTIFF TO FILE A BRIEF THAT DELETES ARGUMENT CONCERNING THE COURT'S AWARD OF ATTORNEY'S FEES TO THE DEFENDANT FOSTER M. YOUNG ON OR BEFORE FEBRUARY 25, 2009, AND OF THIS DATE, SAID BRIEF HAS NOT BEEN FILED, YOU ARE HEREBY ADVISED THAT THE APPEAL IS DISMISSED

BY THE COURT,
CARL D. CICCHETTI
ASSISTANT CLERK-
APPELLATE

APPENDIX D

NOTICE SENT: FEBRUARY 27, 2009
ELAINE M.
SKORONSKI
ROBINSON & COLE
LLP SEYMOUR LAW
FIRM, LLC
LAW OFFICES OF DANIEL D. SKURET
FOSTER M. YOUNG, PRO
SE LAURA SIGLINGER,
PRO SE GLENN
SIGLINGER, PRO SE
CHARLES D. GIANETTI,
PRO SE
CLERK, JD OF FAIRFIELD (CV98 0349830S)
HON. WILLIAM B. RUSH PAC 34S/82924

this section applies to a prevailing party on appeal. CUTPA does not have a provision for appellate attorney's fees, and they have not been regularly allowed.

No evidence has been presented (there is none), and certainly no finding has been made, that the plaintiffs claims are frivolous.

Therefore, for all the above reasons plaintiff/appellant respectfully requests that the judgment of the trial court be reversed, and no appellate attorney's fees be awarded to defendants/appellees Siglinger as a matter of law.

2. As to the award of appellate attorney's fees to defendant/appellee Young.

The standard of review is plenary.

The trial court in the Memorandum [Memo 8/4/08, p. 1] cites the case of Gianetti v. Fischett [sic], 64 Conn.App.902 (2001), which is totally inapposite and irrelevant because no appellate attorney's fees were awarded in that case. Further, plaintiff/appellant asserts in his Motion To Reargue [ p.1] that the only reason given by the trial court for the award of appellate attorney's fees is Torres v. Waterbury, *supra*. As fully set forth in 1., *supra*, Torres v. Waterbury is also totally inapposite. In his Objection To Plaintiffs Motions To Reargue, defendant/appellee Young did not dispute plaintiff/appellant's assertions that Torres v. Waterbury had no bearing on this case.

Thus, there is no evidence of a contractual or statutory basis for the award of appellate attorney's fees .to defendant/appellee Young, and the judgment of the trial court should be reversed as a matter of law.

3. The trial court is clearly erroneous in denying plaintiff/appellant's Motion To Reargue.

APELLATE COURT

STATE OF CONNECTICUT

AC 28857

CHARLES D. GIANETTI, M.D.

V.

GLENN SIGLINGER ET AL.

FEBRUARY 11, 2009

ORDER

AFTER HEARING AS TO WHY THE APPEAL SHOULD NOT BE DISPOSED OF, P.B. SECTION 85-1 AND WHY SANCTIONS SHOULD NOT BE IMPOSED, P.B. SECTION 85-2, FOR FAILURE OF THE PLAINTIFF APPELLANT TO FILE HIS BRIEF ON OR BEFORE NOVEMBER 20, 2008, IN COMPLIANCE WITH THE APPELLATE COURT ORDER OF NOVEMBER 5, 2008, IT IS HEREBY ORDERED THAT THE APPEAL WILL BE DISMISSED UNLESS THE PLAINTIFF FILES HIS BRIEF IN COMPLIANCE WITH THIS COURT'S PREVIOUS ORDER DATED NOVEMBER 5, 2008, REQUIRING THE PLAINTIFF TO FILE A BRIEF THAT DELETES ARGUMENT CONCERNING THE COURT'S AWARD OF ATTORNEY'S FEES TO THE DEFENDANT FOSTER M. YOUNG ON OR BEFORE FEBRUARY 25, 2009. IT IS FURTHER ORDERED

THAT NO MOTIONS OR OTHER DOCUMENTS, OTHER THAN A COMPLIANT PLAINTIFF APPELLANT'S BRIEF, SUBMITTED BY THE PLAINTIFF FOR FILING WILL BE ACCEPTED AND THE APPELLATE CLERK IS DIRECTED TO RETURN ANY SUCH SUBMISSIONS UNTIL AFTER THE PLAINTIFF'S BRIEF IS FILED IN THIS MATTER.

BISHOP, J. IS RECUSED

BY THE COURT

CARL D. CICCETTI

ASSISTANT CLERK-
APPELLATE

NOTICE SENT: FEBRUARY 11,
2009 ELAINE M. SKORONSKI
ROBINSON & COLE LLP
SEYMOUR LAW FIRM, LLC
LAW OFFICES OF DANIEL D. SKURET
FOSTER M. YOUNG, PRO SE LAURA
SIGLINGER, PRO SE GLENN SIGLINGER,
PRO SE CHARLES D. GIANETTI, PRO SE

345/82924

Superior Court of Connecticut,

Judicial District of Fairfield

Charles D. GIANETTI, M.D.
v.
Glenn SIGLINGLER et al.

No. CV980349830.March 22, 2007.
Charles D. Gianetti, Bridgeport, pro se.
Glenn Siglinger, Ansonia, pro se.
Laura Siglinger, Ansonia, pro se.
Foster Young, Virginia Beach, VA, pro se.
Elaine Skoronski, Bethany, Seymour Law Firm LLC, Shelton,
Daniel Skuret, Ansonia, for Glenn Siglingler et al

RUSH, J.T.R.

*1 The present issue involves motions filed by the defendants for a supplemental judgment, asserting a claim for attorneys fees necessarily incurred to successfully defend an appeal taken by the plaintiff from an adverse judgment rendered by this court almost two years ago. The plaintiff; a medical doctor, instituted a lawsuit against the defendants Glenn & Laura Siglinger **(Siglinger)**, and their attorney, Foster Young, seeking to recover the balance due of medical fees over and above the amount that the plaintiff was entitled to recover from the Health Maintenance Organization to which the defendants Siglinger belonged. The Court denied the plaintiffs claim and also found that he violated the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42a-110 et seq. The Court also awarded monetary and punitive damages in favor of the defendants Siglinger

against the plaintiff in the amount of $39,970.00 and further awarded a judgment in the amount of $25,656.30 in favor of the defendant Young against the plaintiff. The action of the trial court was affirmed by our Supreme Court. *Gianetti v. Siglinger*, 279 Con13900 A.2d 520 (2006).

The defendants now seek attorneys fees representing the cost of successfully defending the appeal taken by the plaintiff. The Court finds that attorneys fees, with respect to defending the appeal, are proper damages to be considered. See *Torres v. Waterbury*, 30 Conn.App. 620, 626-27, 621 A.2d 764 (1993).

Under General Statutes 42-110(g)(d) the court may award, for a violation of CUTPA "reasonable attorneys fees" based upon the work reasonably performed by an attorney and not on the amount of recovery. Defendants Siglinger and defendant Young have both filed a claim for supplemental attorneys fees regarding the appeal. The court's normal starting point for determining reasonable attorneys fees is a calculation of the so-called "Lodestar" figure which is arrived at by multiplying the number of hours reasonably expended in a litigation by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1993 61 L.Ed. 40 (1983). "For each attorney, the date, the hours expended and the nature of the work done, hours that are excessive, redundant or otherwise unnecessary are to be excluded ... and in dealing with such surpluses the court has discretion simply to deduct a reasonable percentage of the number of hours claimed as a practical means of

trimming fat from a fee application." (Citations and internal quotation marks omitted.) *Kirsch v. Fleet Street, LTD.*, 148 F.3rd, 149, 172-73 (2nd Cir.1998).

In *Steiger v. J.S. Builders, Inc.*, 39 Conn.App. 32, 38, 39, 663 A.2d 432 (1995), the Court approved the following guidelines concerning calculation of attorneys fees for CUTPA violations:

(1) the time and labor required; (2) novelty and difficulty of the questions; (3) the skill requisite to perform legal services properly; (4) preclusion of other employment by the attorney due to the acceptance of the case; (5) customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved in and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; (12) award similar cases.

*2 On behalf of the defendant Young, his attorneys have submitted two bills, at the rate of $350.00 an hour: the first bill totals 162 .3 hours and the second bill totals 13.08 hours. Some of the entries which cause concern are set forth below.

The bills submitted contain over 10 hours of time spent for office conferences without designating as to who conferred with whom and

as to what subject matter; over 14 hours of conferences with the client; over three hours for miscellaneous telephone conferences with the clerk of the court; two and a half hours for a review of a ten-page brief of the amicus curiae; 18 hours over a nine-day period, without a daily designation of time in preparation for the argument before our Supreme Court. There is entry for two and one-half hours (representing a charge of $875.00) for transportation of briefs when mail could be done less expensively; there is a three-hour charge for research into the background of Attorney Neigher, who testified for the plaintiff on the fee issue as well as a three-hour charge in preparation for her disposition.

The issue is not whether the attorney's time was actually expended, but rather whether it was reasonable and sufficiently documented to warrant a judgment that someone else should pay for it. The Court believes that there should be a substantial reduction of approximately 45% for the attorneys fee submitted on behalf of the defendant Young.

Accordingly, the Court awards a supplemental judgment against the plaintiff in favor of the defendant Young in the amount of

$39,053.05 (comprised of attorney fees in the amount of $33,760.00; disbursements in the amount of $3,973.93; and $1,319.12 (as per Exhibit I) for expenses necessarily incurred by the defendant to attend the hearing before this court and the oral argument before the

Connecticut Supreme Court). A supplemental judgment is also awarded against the plaintiff in favor of the defendants Siglinger in the amount of $11,000 as per Exhibit G.